

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**RONALD-KENNETH STRASSER,**

Plaintiff,

v.

**STATE OF OREGON, *et al.*,**

Defendants.

Case No. 3:19-cv-1051-SI

**ORDER**

**Michael H. Simon, District Judge.**

Plaintiff filed this case on July 3, 2019. The Court granted Plaintiff's motion for leave to proceed *in forma pauperis* on August 30, 2019. ECF 4. Pursuant to the Court's Order dated August 30, 2019, and mailed to Plaintiff, Plaintiff had 30 days to prepare a summons, complete the U.S. Marshals Service Form, and submit those documents along with the operative complaint to the Clerk of the Court for issuance of the summons and service of process. ECF 4. After Plaintiff failed to do so, on January 6, 2020, the Court ordered Plaintiff to comply with the August 30 Order, reminded Plaintiff of the service requirements of Rule 4(m) of the Federal Rules of Civil Procedure, extended the date for Plaintiff to return the summons and U.S. Marshals Service Form to February 6, 2020, instructed Plaintiff to return the U.S. Marshals Service Form or independently serve Defendants, and explained that the case could be dismissed

for lack of prosecution if Plaintiff failed to effectuate service of process in a timely manner.

ECF 11. Plaintiff did not return the summons, did not return the U.S. Marshals Service Form, and did not timely file a Proof of Service with respect to any Defendant.

Plaintiff filed two amended complaints. On March 16, 2020, the Court dismissed *sua sponte* Plaintiff's Second Amended Complaint with prejudice for failure to state a claim and for Plaintiff's failure to follow the Court's orders. The Ninth Circuit reversed and remanded with instructions to allow Plaintiff the opportunity to file an amended complaint to attempt to cure the deficiencies identified by the Court. Upon remand, this Court explained the deficiencies in Plaintiff's Second Amended Complaint and allowed Plaintiff the opportunity to file a Third Amended Complaint. ECF 33. The Court subsequently allowed Plaintiff to file a Fourth Amended Complaint, which currently is the operative complaint.

Both before the Court dismissed this case and after remand, however, Plaintiff never returned the U.S. Marshals Service Form, or a completed summons, or other documents required for service of process and to properly begin this lawsuit. Indeed, no summons has ever been issued in this case. Rule 4(m) of the Federal Rules of Civil Procedure "provides that an action against a defendant *shall* be dismissed without prejudice if that defendant is not served with a copy of the summons and complaint within [90] days after the filing of the complaint, unless the plaintiff can show good cause why service was not made within the [90] day period." *Townsel v. Contra Costa Cty., Cal.*, 820 F.2d 319, 320 (9th Cir. 1987) (emphasis added); *see also* Fed. R. Civ. P. 4(m) ("If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—*must* dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." (emphasis added)).

Several Defendants have already appeared in this case and filed motions to dismiss without raising the defense of insufficient service of process.<sup>1</sup> ECF 52. Accordingly, those Defendants have waived formal service. *See Fed. R. Civ. P. 12(h)(1)*. Because no summons has been issued in the case and Plaintiff has not returned the U.S. Marshals Service Form or filed a Proof of Service, it appears that the remaining Defendants have not yet been formally served with process as required under Rule 4(m).<sup>2</sup> If these Defendants are not served with process or waive serve of process, the Court must dismiss the claims against these Defendants under Rule 4(m). Because of the circumstances of this case, with appeal and remand, the Court finds it appropriate to extend the time for service of process.

The Clerk of the Court is directed to send Plaintiff additional copies of a blank summons, U.S. Marshals Service Form (USM 285), and the Order to Proceed *In Forma Pauperis* (ECF 4), which describes the procedure Plaintiff must follow to effectuate service of process. Plaintiff must follow the instructions and return the summons, U.S. Marshals form, and copies of the Fourth Amended Complaint to the Court by September 17, 2021, for the Marshals to effectuate service on the Defendants who have not yet appeared in this action. If Plaintiff intends to effectuate his own service, Plaintiff need only return the summons so that it may be issued.

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<sup>1</sup> These Defendants are: State of Oregon, Governor Kate Brown, Shelley Hoffman, Katy Coba, Robert D. Herndon, Jeffery S. Jones, Thomas J. Rastetter, Debbie Spradley, John S. Foote, Christopher K. Haywood, Department of Public Safety Systems and Training, Samantha G. Olson, and All Clerks of Clackamas County Court and their Associates.

<sup>2</sup> These Defendants are: Craig Roberts, Clackamas County Sheriff; Dave M. Ellington, Clackamas County Under Sheriff; Daniel Joseph O'Keefe, Clackamas County Sheriff Deputy; Greg Keppler, Clackamas County Sheriff Deputy; Eric Machado, Clackamas County Risk and Safety Manager; David O'Shaughnessy, Captain; Corey R. Smith, Sergeant; Morgan Guthner, Clackamas County Sheriff Deputy; Donald Krupp, County Administrator; Laurel Butman, Chief Executive Officer Deputy; Ken Humberston, Commissioner; Oregon State Sheriff's Association; Sheriff Pat Garrett, 2017 OSSA President & Washington County Sheriff.

Plaintiff, however, then must serve those Defendants according to the Federal Rules of Civil Procedure and file a Proof of Service. The Court extends the deadline for service under Rule 4(m) until November 19, 2021.

**IT IS SO ORDERED.**

DATED this 25th day of August, 2021.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge